

# United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

## NOTICE OF ISSUANCE OF MANDATE

DATE: June 23, 2006

TO: Norbert G. Jaworski  
United States District Court  
Southern District of Illinois  
Room 142  
750 Missouri Avenue  
P.O. Box 186  
East St. Louis, IL 62202

FROM: Clerk of the Court

RE: 05-3390, 05-3558, 05-3559 & 05-3586  
Bradfish, Donald v. Templeton Funds Inc  
Kwiatkowski, Vince v. Templeton Growth, et al  
Woodbury, Edmund v. Templeton Smaller, et al  
Parise, Joseph v. Templeton Funds Inc, et al  
05 C 298, Michael J. Reagan, Judge  
05 C 299, G. Patrick Murphy, Chief Judge  
05 C 301, G. Patrick Murphy, Chief Judge  
✓ 05 C 300, G. Patrick Murphy, Chief Judge

Herewith is the mandate of this court in this appeal, along with the Bill of Costs, if any. A certified copy of the opinion/order of the court and judgment, if any, and any direction as to costs shall constitute the mandate.

☒ [X] No record filed

☐ [ ] Original record on appeal consisting of:

ENCLOSED: TO BE RETURNED AT LATER DATE:

<input type="checkbox"/> [ ]	Volumes of pleadings	<input type="checkbox"/> [ ]
<input type="checkbox"/> [ ]	Volumes of loose pleadings	<input type="checkbox"/> [ ]
<input type="checkbox"/> [ ]	Volumes of transcripts	<input type="checkbox"/> [ ]
<input type="checkbox"/> [ ]	Volumes of exhibits	<input type="checkbox"/> [ ]
<input type="checkbox"/> [ ]	Volumes of depositions	<input type="checkbox"/> [ ]
<input type="checkbox"/> [ ]	In Camera material	<input type="checkbox"/> [ ]
<input type="checkbox"/> [ ]	Other _____	<input type="checkbox"/> [ ]

Record being retained for use \_\_\_\_\_ ☐ [ ]  
in Appeal No. \_\_\_\_\_

Copies of this notice sent to: Counsel of record  
☐ [ ] United States Marshal  
☐ [ ] United States Probation Office

### NOTE TO COUNSEL:

If any physical and large documentary exhibits have been filed in the above-entitled cause, they are to be withdrawn ten days from the date of this notice. Exhibits not withdrawn during this period will be disposed of.

Please acknowledge receipt of these documents on the enclosed copy of this notice.

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Received above mandate and record, if any, from the Clerk, U.S.  
Court of Appeals for the Seventh Circuit.

Date: \_\_\_\_\_  
(1071-120397)

*Jackie Payton*  
\_\_\_\_\_  
Deputy Clerk, U.S. District Court

**RECEIVED**

**JUN 26 2006**

**CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF ILLINOIS  
EAST ST. LOUIS OFFICE**

# United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

## JUDGMENT- WITHOUT ORAL ARGUMENT

Copy

Date: May 19, 2006

BEFORE: Honorable FRANK H. EASTERBROOK, Circuit Judge  
Honorable KENNETH F. RIPPLE, Circuit Judge  
Honorable DIANE P. WOOD, Circuit Judge

DONALD BRADFISCH, ] Appeal from the United  
Plaintiff-Appellant, ] States District Court for  
No. 05-3390 v. ] the Southern District of  
] Illinois.

TEMPLETON FUNDS, INC. and ] No. 05 C 298  
TEMPLETON GLOBAL ADVISORS LTD., ]  
Defendants-Appellees. ] Michael J. Reagan,  
] Judge.  
]

VINCE KWIATKOWSKI, EDWARD ] Appeals from the United  
WOODBURY and JOSEPH PARISE, JR., ] States District Court for  
Plaintiffs-Appellants, ] the Southern District of  
] Illinois.

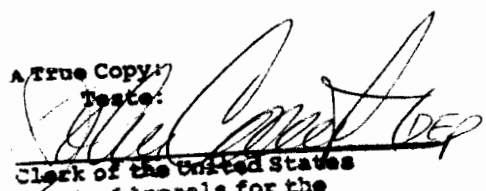
Nos. 05-3558, 05-3559 & v. ]  
05-3586 ] Nos. 05 C 299  
] 05 C 301  
] 05 C 300

TEMPLETON GROWTH FUND INC., et al., ]  
Defendants-Appellees. ]  
] G. Patrick Murphy,  
] Chief Judge.  
]

The judgments of the District Court are AFFIRMED, with costs,  
in accordance with the decision of this court entered on this date.

(1060-110393)

A True Copy:  
Teste:

  
Clerk of the United States  
Court of Appeals for the

UNPUBLISHED ORDER  
Not to be cited per Circuit Rule 53

ORIGINAL COPY

United States Court of Appeals  
For the Seventh Circuit  
Chicago, Illinois 60604

Submitted April 18, 2006  
Decided May 19, 2006

Before

**Hon. FRANK H. EASTERBROOK**, Circuit Judge

**Hon. KENNETH F. RIPPLE**, Circuit Judge

**Hon. DIANE P. WOOD**, Circuit Judge

DONALD BRADFISCH,  
*Plaintiff-Appellant,*

No. 05-3390 v.

TEMPLETON FUNDS, INC. and TEMPLETON GLOBAL  
ADVISORS, LTD.,  
*Defendants-Appellees.*

Appeal from the United States  
District Court for the Southern  
District of Illinois.

No. 05 C 298  
Michael J. Reagan, *Judge.*

VINCE KWIATKOWSKI, EDMUND WOODBURY AND  
JOSEPH PARISE, JR.,  
*Plaintiffs-Appellants,*

Nos. 05-3558, 05-3559 & v.  
05-3586

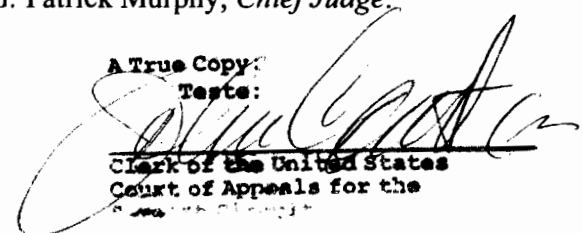
TEMPLETON GROWTH FUND, INC., *et al.*,  
*Defendants-Appellees.*

Appeals from the United States  
District Court for the Southern  
District of Illinois.

Nos. 05 C 299  
05 C 301  
05 C 300  
G. Patrick Murphy, *Chief Judge.*

Order

A True Copy  
Teste:

  
Clerk of the United States  
Court of Appeals for the

These four appeals are governed by the Supreme Court's decision in *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Dabit*, 126 S. Ct. 1503 (2006). Although the plaintiffs maintain

Nos. 05-3390, 05-3558, 05-3559 and 05-3586

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that *Dabit* does not control because (in their view) the defendant funds have been negligently managed, they have not sought relief through derivative litigation and therefore cannot take advantage of the exception for that kind of suit in the Securities Litigation Uniform Standards Act of 1998. For direct litigation, labels are not material, as we explained in *Kircher v. Putnam Funds Trust*, 403 F.3d 478 (7th Cir. 2005), cert. granted on other grounds, 126 S. Ct. 969 (2006), a decision that the Supreme Court approved in *Dabit*.

These appeals are not affected by the grant of certiorari in *Kircher*. The Supreme Court limited the writ to a dispute about appellate jurisdiction of appeals by defendants from remand orders under the SLUSA. These defendants did not appeal from the district court's orders in 2004 remanding the suits. They removed again following the decision on the merits in *Kircher*, and the only appeals have been filed by the plaintiffs.

On the authority of *Dabit* and *Kircher*, the judgments are affirmed.